

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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UNITED STATES OF AMERICA

DEFENDANT'S REQUESTS
REGARDING
VOIR DIRE

- v. -

S12 11 Cr. 755 (JFK)

ROMALDO ESPINAL,

Defendant.

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In addition to the standard questioning, defendant Romaldo Espinal, respectfully requests that the Court inquire of potential jurors as to the following:

1. For those jurors that live outside New York City, how often do you visit the City and for what general purpose?

2. As I have told you, the Government has the burden of proof. The defendant is not required to present any evidence at all. He is never required to prove that he is innocent. The right of a defendant to not testify is an important part of our Constitution. As the Supreme Court of the United States has said

It is not everyone who can safely venture on the witness stand though entirely innocent of the charges against him. Excessive timidity, nervousness when facing others and attempting to explain transactions of a suspicious character, and offenses charged against him, will often confuse and embarrass him to such a degree as to increase rather than remove any prejudice against him. It is not everyone, however honest, who would therefore willingly be placed on the witness stand.

If Mr. Espinal or any defendant does not testify, the law requires that you may not attach any significance to that fact. No adverse inference may be drawn against Mr. Espinal or any defendant

should he not take the witness stand. That being said, it is a natural reaction to want to hear from everybody involved. In the event Mr. Espinal or any defendant does not testify, does anybody feel that you still will have difficulty not considering the fact that a defendant did not testify during your deliberations as a juror on this case? In other words, does anybody feel if the defendant does not testify that is a fact you will hold against him in making your decision in this case?

3. This case involves allegations some regarding the intention to possess a controlled substance with the intent to sell the drug. Because of this subject matter, it is important to find out your beliefs regarding drugs and to determine whether drugs and/or have ever affected your life or that of a family member or friend. If the answering of these questions in public make you uncomfortable, please raise your hand and we will arrange for you to approach the bench for a private conversation.

- a) Have you, a family member or a friend ever suffered from addiction to any type of drug?
- b) Have you, a family member or a friend ever had any experience regarding drug use or abuse?
- c) Does anybody feel that they harbor such a negative view toward illegal drugs in general that it will be difficult not to prejudge any defendant due to that fact that he is charged with a drug crime?
- d) Is there any other reason related to drugs, drug use or drug abuse that I have, or even have not, touched upon that makes you believe you will not be an appropriate and fair juror in this trial of drug charges?

4. You will also hear allegations about the possession of handguns. Does the fact that the gun possession is alleged in this case affect your ability to be a fair and impartial juror? In other words, do you feel that once you hear about an allegation of gun possession, your ability to be fair and impartial to a defendant or the defendants will be clouded or impeded based on an emotional response or other reaction to negative feelings.

5. Have you, a family member or close friend ever worked for a law enforcement

or prosecutorial agency such as, but not limited to, a United States Attorney's Office, a District or State's Attorney's Office, NYPD, FBI, DEA or any state or local police departments?

6. The indictment which was filed against the defendant is the means by which the Government gives him notice of the charges against him and brings him before the court. It is nothing more. The indictment is an accusation, and nothing more. The indictment is not evidence and you are to give no weight to the fact that an indictment has been filed in arriving at your verdict. Despite what I have just told you, does anybody feel that because a person is charged with a crime and an indictment is filed against that person that there must be truth or validity to the charges? In other words, does anybody feel that "where there is smoke there must be fire?"

7. What historical figure do you most admire and why?

8. Has any juror been the victim of any crime? Please explain?

9. There are several separate defendants on trial. They are on trial together but are each receiving a separate trial before the same jury. You will hear evidence that is applicable to one defendant and not the other. Will you be able to consider the evidence independently as it applies to each defendant and not take the evidence as a whole and consider all the evidence as if it applies to both defendants?

10. Defendant Romaldo Espinal respectfully joins in the proposed voir dire submitted by his co-defendants.

Dated: New York, New York
September 18, 2013

Respectfully submitted,

_____/s/_____

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